

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALAN SCOTT ANDRE,

Petitioner,

v.

DOUG WADDINGTON,

Respondent.

CASE NO. CV-06-503-JCC

ORDER

This matter comes before the Court on the Report & Recommendation (“R&R”) of the Honorable Mary Alice Theiler, United States Magistrate Judge (Dkt. No. 26), Petitioner’s Objection to the R&R (Dkt. No. 27), and Respondent’s Response to Petitioner’s Objection (Dkt. No. 28). After reviewing the parties’ submissions and the remaining record, the Court adopts the R&R.

**I. ANALYSIS**

In his Objection to the R&R, Petitioner takes issue with Judge Theiler’s analysis of his juror misconduct and *Miranda* rights claims. (Dkt. No. 27 at 1–3.) Petitioner introduces no new evidence or argument in his Objection, and the Court adopts the R&R’s analysis and conclusions as to these claims.


Judge Theiler concluded that because they were procedurally barred by Washington Revised Code section 10.73.090, five of Petitioner’s claims must be dismissed with prejudice. (R&R at 9–11 (Dkt. No.

26.) Petitioner requests that those claims be dismissed without prejudice so that he may pursue them in state court. (Pet.'s Obj. to R&R at 4 (Dkt. No. 27).) Washington Revised Code section 10.73.090 bars Petitioner from pursuing these claims in state court, and the Court must dismiss habeas claims with prejudice when they are procedurally barred. *See Reed v. Ross*, 468 U.S. 1, 9 (1984); *Franklin v. Johnson*, 290 F.3d 1223, 1231 (9th Cir. 2002).

## II. CONCLUSION

The Court ADOPTS the R&R. Petitioner's habeas petition and this action are DISMISSED, with prejudice. The Clerk is directed to send copies of this Order to Petitioner, to counsel for Respondent, and to Judge Theiler.

SO ORDERED this 30th day of May, 2007.

  
John C. Coughenour  
United States District Judge